STATE PERSONNEL BOARD, STATE OF COLORADO Case No. 2001B070

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

DANNY R. GOMEZ,

Complainant,

VS.

DEPARTMENT OF CORRECTIONS,

Respondent.

Hearing was held on April 9, 2001 before Administrative Law Judge Kristin F. Rozansky at the offices of the State Personnel Board, 1120 Lincoln, Suite 1420, Denver, Colorado. Respondent was represented by Assistant Attorney General Susan J. Trout. Complainant appeared and represented himself.

MATTER APPEALED

Complainant, Danny R. Gomez ("Complainant" or "Gomez") appeals his pay reduction and removal from the Special Operations Response Team by the Department of Corrections ("Respondent" or "DOC").

For the reasons set forth below, Respondent's action is affirmed.

PRELIMINARY MATTERS

Respondent was represented by Susan Trout, Assistant Attorney General, 1525 Sherman Street, 7th Floor, Denver, Colorado. Respondent's Advisory Witness for the proceedings was Brian Gomez, Director of Youthful Offender System for Respondent.

Complainant represented himself and was present for the evidentiary proceedings.

PROCEDURAL MATTERS

A. Witnesses

Respondent called the following witnesses:

- 1. Joseph B. Perez, DOC Armory/Weapons Ranges, temporary SORT commander
- 2. Erin Tellez, Training Coordinator
- 3. Complainant, Danny R. Gomez
- 4. Stephen B. Cook, COI
- 5. James R. Romanski, Jr., Commander of Special Operations Response Team ("SORT")
- 6. Brian A. Gomez, Director of Youthful Offender System

Complainant testified on his own behalf.

B. Exhibits

Respondent's Exhibits 1 through 19 (Exhibit 18 is a duplicate) and Complainant's Exhibit A were admitted by stipulation of the parties.

ISSUES

- 1. Whether Complainant committed the acts for which he was disciplined;
- 2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;
- 3. Whether the discipline imposed was within the range of alternatives available to the appointing authority;

FINDINGS OF FACT

Each finding of fact set forth below contains a parenthetical citing the testimony of the witness or exhibit upon which, at least in part, that finding of fact is based. The citations provided are <u>not</u> exclusive of other portions of the record.

A. General Background Information

- 1. Danny R. Gomez has worked for the Department of Corrections for nine and a half years. (Complainant)
- 2. On or about September 1, 2000, the Complainant was promoted from a COI to a COII. (Director Gomez)

- 3. Prior to January 5, 2001, Complainant was a member of the Special Operations Response Team ("SORT"). (Exhibit 1)
- 4. Serving on SORT is a privilege earned by DOC employees through competent work and is done only with the approval of the employee's appointing authority. (Complainant)
- 5. SORT is an elite group which handles critical and/or highly specialized missions for DOC. Members have the ability to utilize lethal force. On occasion the team is utilized to negotiate for the lives of others when there is an inmate riot or hostage situation. They are also utilized when there is a need for extreme security, such as the transport of high profile inmates or the transportation of inmates out-of-state. (Director Gomez)
- 6. SORT team members are expected to have strong self-discipline and in daily interactions they are held to a higher standard then other correctional officers. They are also expected to comply with all state statutes, regardless of the mission in which they are involved. (Lt. Perez and Director Gomez)

The May 15, 2000 Accident

- 7. On May 15, 2000, SORT was sent on a mission to provide security for Governor Owen's visit to the Arkansas Valley Correctional Facility ("AVCF"). (Lt. Perez and Lt. Tellez)
- 8. The participants in the SORT mission drove in a convoy to the AVCF via Highway 96. (Lt. Tellez)
- 9. A short distance from AVCF the convoy pulled over to the side of the road for a brief break. (Complainant)
- 10. There were four vehicles in the convoy, driving in one lane with an appropriate space in between each vehicle. The first vehicle was driven by an unknown individual, the second by Sgt. Gomez (Complainant), the third by Rocha and the fourth by Lt. Tellez. (Lt. Tellez and Complainant)
- 11. Approximately one mile from AVCF, while on the highway, there was a collision between the Complainant's vehicle (an eighteen passenger van) and Gil Rocha's vehicle (a Suburban). (Lt. Tellez and Exhibits 14 and 15).
- 12. The following series of events lead up to and culminated in the accident:
 - Rocha pulled into the passing lane, the left lane, on Highway 96;
 - After Rocha had fully pulled into the passing lane and his front bumper was level with Complainant's rear bumper, Complainant began to move into the left hand lane, intending to pass the vehicle in front of him and take the lead of the convoy;

- Complainant did not see Rocha's vehicle;
- The two vehicles collided when Complainant's vehicle was moving into the left lane;
- Rocha immediately tried to correct by moving to the left to avoid any further contact and applying his brakes;
- Complainant pulled to the right as soon as the vehicles impacted;
- Tellez, as soon as the vehicles collided, began to brake because he was concerned that his vehicle would hit either Complainant's or Rocha's vehicle;
- From his viewpoint, Tellez was concerned that Rocha's vehicle was going to flip, but he did not have that concern about Complainant's vehicle;

(Lt. Tellez and Complainant)

- 13. After the accident, the convoy pulled off onto the shoulder of the highway and looked for damage to the vehicles and injuries. (Lt. Tellez)
- 14. There was damage to Complainant's vehicle on the rear quarter panel, from the back portion of the wheel well to the front portion of the bumper. However, Complainant's vehicle was still serviceable and safe to drive. (Lt. Perez, Lt. Tellez and Officer Cook)
- 15. There was no significant damage to Rocha's vehicle. (Lt. Tellez)
- 16. Witnesses' estimates of the damage to Complainant's vehicle vary from \$200 to \$300 (Lt. Tellez); to \$700 (Complainant); to moderate (Officer Cook); to significant (Officer Miklich). (Lt. Tellez, Complainant, Officer Cook and Attachment 8 to Exhibit 13)
- 17. If the damage to Complainant's vehicle had been significant or if there had been injuries, Lt. Tellez or the Complainant would have stayed with the vehicle and reported the accident to the state patrol. However because the damage was not severe and there were no injuries, and because of the importance of the SORT mission, the convoy proceeded to AVCF. (Lt. Tellez and Attachment 3 to Exhibit 13)
- 18. After arriving at the facility, Tellez told a number of people, including members of his squad, but <u>not</u> the Complainant, that the accident should be reported to supervisors and to the state patrol. (Lt. Tellez)
- 19. COI Steve Cook was the squad leader for the mission that day, responsible for everything his squad did and/or did not do on the mission. (COI Cook)
- 20. Cook did not witness the accident but heard about it while SORT was at AVCF. (COI Cook)
- 21. Cook discussed the accident with the Complainant while the SORT members were

- having lunch at a restaurant. (COI Cook)
- 22. During that discussion, Complainant told Cook that while the convoy was pulling back onto the highway, there was a slight accident with Rocha. (COI Cook)

The Complainant's Accident Reports

- 23. Lt. Joseph Benjamin Perez lead the mission to the AVCF and was the temporary SORT commander while Lt. Romanski was at a training in Virginia. (Lt. Perez)
- 24. Perez did not witness the accident but learned of the accident on May 15, 2000, the day it occurred, and, when he spoke with Complainant about it, told Complainant to fill out a report and to report it to his supervisors who would tell him what he needed to do. (Lt. Perez)
- 25. Complainant showed Perez a partially-finished report but Perez did not review it. (Lt. Perez)
- 26. Perez assumed that the accident occurred on premises, but is unsure how he arrived at that assumption. (Lt. Perez)
- 27. Perez did not tell Complainant to file a report with the state patrol because he did not realize the accident had occurred off the premises of AVCF. (Lt. Perez)
- 28. The Complainant authored three reports in connection with the accident a DOC Employee Consolidated Report Form (Exhibit 14) (the "DOC Report"); a Division of Risk Management Vehicle Accident Report (Exhibit 15) (the "Risk Management Report"); and a State of Colorado Traffic Accident Report (Exhibit 16) (the "State Accident Report"). (Complainant)
- 29. None of the reports authored by the Complainant mention that he was moving from the right lane into the left lane when the accident occurred. (Complainant and Exhibits 14, 15 and 16)
- 30. The one diagram of the accident prepared by Complainant shows all three vehicles in the right hand lane. It does not show where the collision actually occurred. It does not show Rocha's vehicle in the left lane, nor does it show Complainant pulling into the left lane. (Complainant and Exhibit 15)
- 31. The DOC Report was the first report authored by the Complainant. It was prepared the afternoon of the accident and the morning following the accident. (Complainant and Exhibit 14)
- 32. In the DOC Report (Exhibit 14), the Complainant describes the accident, in part, as

follows:

"I was parked on the side of the Highway along with two other D.O.C. vehciles [sic]. In a convoy formation as we proceeded back onto the highway in route to the Arkansas Valley Correctional Facility. The Suburban ... driven by Lt. G. Rocha, DOC caught the rear fender and bumper of the blue van which I was driving. Due to our need to be at A.V.C.F. by 0600 for security briefing ... the local law enforcement/state patrol was not notified.

33. The Risk Management Report (Exhibit 15) describes the accident, in part, as follows:

"Van parked on side of HWY 96 ... between two other state vehicles. All vehicles proceeded back onto Highway. Vehicle #1 [Rocha's vehicle] caught the left rear fender & bumper of vehicle #2 [Complainant's vehicle], as we were pulled back onto Highway in a convoy formation."

34. The State Accident Report (Exhibit 16) describes the accident, in part, as follows:

"I was in state vehicle...parked on Hwy 96...I was in a convoy formation with two other state vehicles...I was the middle vehicle. As we proceeded to get back on Highway the left rear bumper & fender were hit by the vehicle behind me. We pulled back over to the side of the road to check damage and injuries. We then proceeded to A.V.C.F. to complete our mission."

- 35. Lt. Romanski, the SORT commander, did not participate in the mission to AVCF because he was attending an out-of-state training. (Lt. Romanski)
- 36. Romanski did speak with Complainant, via telephone, just after he filled out the State Accident Report. (Lt. Romanski)
- 37. Complainant had been instructed to file a report with the state patrol and was told to page Lt. Romanski when he filed that report. (Lt. Romanski)
- 38. Complainant discussed with Lt. Romanski his description of the accident in the State Accident Report. (Lt. Romanski)
- 39. Lt. Romanski was surprised because Complainant's State Accident Report did not state that his vehicle was changing lanes. (Lt. Romanski)
- 40. Complainant told Romanski that there was not enough room on the State Accident Report to include that information. (Lt. Romanski)
- 41. Romanski told Complainant that if someone were to review all of the reports filed in this matter it would look as if SORT were trying to cover something up. (Lt. Romanski)

- 42. Complainant, in describing the accident as he did, did not intend to blame Rocha for the accident, but he understands that it could be perceived that way. (Complainant)
- 43. Complainant believes that when he wrote his various reports he should have run the accident through his mind so that he would have a clear picture of the details of the accident. (Complainant)
- 44. While employed by DOC, Complainant has prepared numerous reports. When preparing the reports he has always tried to put in all of the important details and, if a supervisor told Complainant to add more detail, he would do so. (Complainant)

Disciplinary Action

- 45. Prior to imposing discipline, Brian Gomez, Complainant's appointing authority, reviewed the Inspector General's Report (Exhibit 13), including the six eye witness reports attached to that report, and the three accident reports authored by Complainant (Exhibits 14, 15, and 16). (Director Gomez)
- 46. After comparing the eyewitness statements in the Inspector General's report to the Complainant's written reports, Gomez believed that there were inconsistences between the statements and the written reports. (Director Gomez)
- 47. The inconsistencies were that Complainant's written reports were reports of an accident occurring on the shoulder. The Inspector General report, which included Complainant's eyewitness report, showed that the accident occurred on the open highway. (Director Gomez)
- 48. On December 15, 2000, Gomez held a R-6-10 meeting with the Complainant. Only Gomez and Complainant were present at the meeting. (Exhibit 1)
- 49. During the R-6-10 meeting, Complainant indicated to Gomez that the accident occurred on the open highway. (Director Gomez)
- 50. During the meeting, Gomez told Complainant that he thought the Complainant's written reports were misleading. Complainant responded that he did not intend to mislead but, given the limited space, did not include everything he should have included. (Complainant and Director Gomez)
- 51. Gomez was troubled by Complainant's response because report writing which does not include material facts is not competent and does not meet standards of efficient service. (Director Gomez)
- 52. During the meeting the Complainant told Gomez that the convoy met with security at

- AVCF at 6:00 a.m. and Governor Owens did not arrive at the facility until 10:00 a.m. Given this timeline, Gomez did not think that there was a time crunch and, therefore, Complainant could have taken the time to report the accident to the appropriate authorities. (Director Gomez)
- 53. Complainant told Gomez that the damage to his vehicle was minor. Gomez viewed photos of the vehicle and did not view it as minor. (Director Gomez)
- 54. On January 5, 2001, via certified mail, Gomez informed Complainant that he was disciplining Complainant for violation of DOC Administrative Regulation 1450-01 (IV-N); (IV-Y); (IV-ZZ); Executive Order Executive Department Code of Ethics (2)(b) and §§ 18-8-111(C), 42-4-1601(1) and 42-4-1007(1)(a). (Director Gomez and Exhibit 1)
- 55. Administrative Regulations 1450-01(IV-N); (IV-Y) and (IV-ZZ) are part of DOC's Staff Code of Conduct and deal with the integrity of DOC and individual employees, falsifying documents or willfully departing from the truth, and conduct unbecoming to a DOC employee. The Executive Order deals with inspiring public confidence and trust in government. The statutes deal with the crime of falsifying a report to the authorities and violations of the traffic laws. (Exhibit 4)
- 56. Gomez believed that Complainant violated the aforementioned administrative regulations, executive order and statutes, by not reporting the accident promptly, leaving the scene of the accident, failing to give testimony in an official investigation and failing to give all the material facts in his written reports. (Director Gomez)
- 57. Given that SORT members may utilize lethal weapons in their missions it is absolutely critical that accurate reports are written in order to protect the state in case of potential civil liability. (Director Gomez)
- 58. Absolute integrity and thoroughness in report writing are more important for a SORT member than a COII because of the difference in oversight between the two jobs. A COII has more oversight from his or her chain of command than a SORT member. (Director Gomez)
- 59. It is important for DOC staff to comply with the Staff Code of Conduct so that they provide appropriate role models to their peers and inmates. (Director Gomez)
- 60. Gomez considered the Complainant's past performance evaluations but did not rely upon them heavily because Complainant was able to perform competently his job at YOS. The issue for Gomez was Complainant's competence as a SORT member. (Director Gomez)
- 61. During his R-6-10 meeting, Complainant asked Gomez to review his initial three month evaluation as a COII with an overall "Competent" rating, prior to imposing discipline. (Director Gomez)

- 62. Gomez, prior to imposing discipline, considered various mitigating factors, including that Complainant was hard working, well liked, a role model for the inmates of the YOS, functioned well as a sergeant so long as he was supervised and Complainant's lack of prior disciplinary history. (Director Gomez)
- 63. Gomez, prior to imposing discipline, considered the higher standards to which SORT team members are held. (Director Gomez)
- 64. Gomez considered imposing a corrective action but given the omission of material facts in the written reports and the possibility that the accident could have been severe, he decided to impose disciplinary action. (Director Gomez)
- 65. Complainant was promoted to a COII position in September 2000, while the investigation on the accident was pending, because Complainant was well liked and, as a COII, Complainant would be adequately supervised. (Director Gomez)
- 66. Gomez imposed discipline on Complainant of an adjustment in pay for six months from \$3885 to \$3668 and permanent removal from the DOC's SORT Team. (Exhibit 1)

Complainant's Reputation

- 67. Tellez has known the Complainant for over seven years and views him as a friendly and professional employee who would not lie. (Lt. Tellez)
- 68. In Romanski's opinion, Complainant was a caring professional member of SORT. (Lt. Romanski)
- 69. Complainant's evaluation for the time period of April 1, 2000 to September 1, 2000 rated a "Needs Improvement" on Quality of Work due to his handling of the reports on the accident. He received an overall rating of "Competent." (Exhibit 9)
- 70. Complainant's three month review for the time period from September 1, 2000 through November 30, 2000, after his promotion to COII and after the accident, has an overall rating of "Competent." It includes a comment that "[w]ritten reports are complete, clear, and concise." (Exhibit A)
- 71. Complainant seeks reinstatement on SORT and payment of the six month reduction of his pay. (Colorado State Personnel Appeal Form)

DISCUSSION

I. GENERAL

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision only if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S. In determining whether an agency's decision is arbitrary or capricious, a court must determine whether a reasonable person, upon consideration of the entire record, would honestly and fairly be compelled to reach a different conclusion. If not, the agency has not abused its discretion. McPeck v. Colorado Department of Social Services, 919 P.2d 942 (Colo. App. 1996).

The credibility of the witnesses and the weight to be given their testimony are within the province of the administrative law judge. <u>Charnes v. Lobato</u>, 743 P.2d 27 (Colo. 1987). It is for the administrative law judge, as the trier of fact, to determine the persuasive effect of the evidence and whether the burden of proof has been satisfied. <u>Metro Moving and Storage Co. v. Gussert</u>, 914 P.2d 411 (Colo. App. 1995).

II. HEARING ISSUES

A. Complainant committed the act for which he was disciplined.

Complainant was disciplined primarily for omitting a material detail from all three of his written reports on the accident. The omitted detail was that the accident occurred on the open highway while Complainant was moving into the left lane. It is undisputed that all three of the reports do not disclose this detail. The Respondent argues that the omission materially alters the overall description of the accident.

While testifying, the Complainant conceded that the reports were not good examples of report writing. Complainant argues, however, that he did not have enough room to include the omitted information on any of the reports. An examination of all three reports shows that there is enough room on each report to include the brief statement that the accident occurred when Complainant was moving into the left hand lane.

When Complainant was filing the State Accident Report with the state patrol, he discussed the contents of that report with Romanski. Romanski pointed out to him that he was omitting the information regarding the lane change. Romanski also told Complainant that by omitting that information it would appear that SORT was trying to cover up the true nature of the accident. Despite this discussion, Complainant <u>still</u> omitted the important and material information. In addition, he did not, until interviewed by the IG's office, make any attempt to clarify this omission.

By not including in his written reports the information that he was on the highway and was moving into the left lane in the reports, anyone reading any of the reports would assume that Complainant was hit from behind while on the shoulder of the highway. The omitted information drastically changes the very nature and description of the accident; therefore, it is material information.

Complainant omitted important and material information from his report. Therefore, he committed the act for which he was primarily disciplined.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

The information which Complainant omitted was material. The omission of that information from not just one, but three different reports, makes Complainant's actions more serious. In addition, in light of Romanski's discussion with Complainant, Complainant had ample opportunity to be aware of the materiality of the omission from all three reports. Yet at no time did he amend any of the three reports. Complainant mitigates this omission by accurately reporting the accident when interviewed by his supervisors, appointing authority and the Inspector General's office.

The testimony of the various witnesses made it clear that all SORT team members are expected to report accurately any incidences in which they are involved. This expectation is important, because of the nature of SORT's missions and in light of SORT's ability to use lethal force on those missions. Without such an expectation, they became a renegade group with the potential to cause great harm to the public. In addition, there was also testimony that SORT members are held in high esteem by fellow DOC employees and are considered role models to their peers and to inmates. Testimony was also provided that SORT members are held to a higher standard then non-SORT members. The DOC Administrative Regulations and the Staff Code of Conduct cited by the appointing authority in the disciplinary letter reflect the expectation that DOC employees shall perform their duties with integrity.

Given the materiality of the omitted information, the importance of accurate, detailed reporting for any incidences which arise on SORT missions, and the expectation that SORT members serve as role models within DOC's workplace and are held to a higher standard, the appointing authority did not act arbitrarily, capriciously or contrary to rule or law when he imposed discipline.

C. The disciplinary action imposed was within the range of reasonable alternatives.

Director Gomez testified that accurate and detailed report writing is an important skill for SORT team members because of the highly volatile types of missions in which they are involved. He also explained the difference between report writing as a COII for a facility and report writing as a member of SORT. At a COII's facility there is a longer chain of command than on SORT. This longer chain of command provides greater overview for written reports.

SORT members are often called upon to write reports about their missions. Those missions often involve dangerous and/or volatile situations, including hostage situations and prison riots. In addition, various people for a wide array of reasons may rely on those reports. It is imperative that written reports on such missions are detailed, accurate and do not omit material information. What makes Complainant's written report of the accident even more problematic are his actions when filing the State Accident Report with the state patrol. Romanski, his SORT commander, pointed out to him that material information had been omitted from the state patrol report. Whether or not Complainant had filed the State Accident Report with the state patrol at the time of his conversation with Romanski is immaterial. If Complainant had already filed the report, he made no attempt to amend it after his discussion with Romanski. If he had <u>not</u> already filed the report, he ignored Romanski's comments.

The testimony of the appointing authority showed that when imposing discipline he balanced the elevated standards for SORT members against the standards expected of Complainant in executing his regular job duties. He also considered a number of factors prior to imposing discipline, including Complainant's work performance at the facility, the skills necessary for members of SORT and the standards to which SORT team members are held. Finally during the hearing, Complainant testified that he does not dispute the reduction in pay but was only contesting his removal from SORT.

Given all of these factors, the discipline imposed by the appointing authority was within the range of reasonable alternatives.

D. Attorney fees are not warranted in this action.

Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and Board Rule R-8-38, 4 CCR 801.

An award of attorney fees is not warranted in this action.

CONCLUSIONS OF LAW

- 1. Complainant committed the acts for which he was disciplined.
- 2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.
- 3. The discipline imposed was within the range of reasonable alternatives.

ORDER

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice.

Dated this 21st day of May, 2001.

Kristin F. Rozansky Administrative Law Judge 1120 Lincoln Street, Suite 1420 Denver, CO 80203

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

- 1. To abide by the decision of the Administrative Law Judge ("ALJ").
- 2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is \$50.00 (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on $8 \square$ inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF MAILING

This is to certify that on the	_ day of May, 2001, I placed true copies of the foregoing INITIAL
DECISION OF ADMINISTRA	ATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS in
the United States mail, postage p	prepaid, addressed as follows:

Danny R. Gomez 17 Donnington Street Pueblo, Colorado 81005

and in the interagency mail, to:

Susan J. Trout Assistant Attorney General Employment Law Section 1525 Sherman Street, 7th Floor Denver, Colorado 80203